IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

LUMBA RAM CHOUDHARY V/S STATE & ORS.

S.B.CIVIL WRIT No. 5054 of 2005 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of Order : 1st May, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. VN KALLA, for the appellant / petitioner
Mr. BL BHATI, DY. G.A., for the respondent

BY THE COURT:

By this petition, the petitioner seeks a direction to direct the respondents to accept the application form of the petitioner, duly submitted on 25.7.2005, and to grant admission to the petitioner in the two years "in service" BSTC Correspondence Course, starting from 17.6.2005. The writ petition was fled on 24.8.2005, and vide order dated 26.8.2005, while issuing notice, it was ordered to be connected with few writ petitions, and by interim order, petitioner was granted provisional admission.

The facts are, that the petitioner alleges to have been appointed as Shiksha Sahayogi on 15.3.2000, vide

Annex.1. While so working, a criminal case was registered against him, and thereupon the Senior Dy. District Education Officer, on 22.2.2001, issued an order (Annex.2), directing Sarpanch not to take the petitioner back on duty till finalisation of the criminal case. Accordingly, the Sarpanch issued the order dated 2.3.2001 (Annex.3), directing to hand over the charge, and that he will be taken back on duty as soon as the criminal case is decided. The petitioner claims to be possessing academic qualifications of Secondary School Examination vide mark-sheet Annex.4, which shows that he passed the Secondary School Examination with Hindi, English and Mathematics subjects. Then vide Annex.5, he acquired the qualification of Senior Secondary in the year 1993, and did graduation vide Annex.6. The criminal case is said to have been decided in favour of the petitioner on 18.3.2005, vide Annex.7. The petitioner than moved application to the Block Elementary Education Officer on 11.4.2005, requesting to be taken back on duty, identical application was also sent to District Collector, Pali. However, the matter went on, and vide Annex.13, dated 16.7.2005, the Chief Executive Officer, Zila Parishad, Pali wrote to the Block Elementary Education Officer, to reinstate the petitioner, who in turn, wrote a letter to the Sarpanch on 20.7.2005, and Sarpanch reinstated the petitioner on 21.7.2005, and the petitioner joined on 22.7.2005. With these facts, it is alleged, that the State Government floated a scheme to

train the untrained Shiksha Sahayogi/Shiksha Karmis, and other Para Teachers, who were appointed under various government schemes, and accordingly, a self financed correspondence course was introduced in the year 2002, and then again in 2005, vide Annex.18. According to the petitioner, the petitioner applied on 25.7.2005, for being given admission, as the acquittal was rendered on 18.3.2005, and despite the guidelines having been issued on 20.2.2005, and despite best efforts, the petitioner was not taken back on duty, and thus, immediately on being taken on duty, he moved the application. Thus, refusal to give admission is bad.

A reply has been filed, wherein the main stand taken was, that the petitioner did not apply till the last date, being 25.6.2005, and therefore, he could not be given admission.

I have heard learned counsel for the parties, and have gone through the documents annexed with the writ petition.

A look at Annex.18 shows, that thereunder different categories of Para Teachers, who are "in service", and possessing requisite academic qualification, were entitled to apply, and were to be given admission. So far the academic qualification part is concerned, it cannot

be disputed that the petitioner does possess the academic qualifications. The only question is, that since the petitioner did not apply upto 25.6.2005, and applied on 25.7.2005, whether he should be held entitled to be given admission?

Admittedly, the answer is required to be given in negative, inasmuch as, the last date prescribed has a sacrosanct, and is required to be followed. However, the present case stands on entirely different footing, inasmuch as, though, he was appointed vide Annex.1, and simply because he was facing the criminal prosecution, and had to remain in custody for some time, he had been removed from service. It is the case of the petitioner, that he was removed with stipulation that after disposal of the criminal case, he will be taken back, and a look at Annex.3 shows, that it was positively stipulated therein, that he would be reinstated after decision of the case. It passes my comprehension, as to how such removal could be made, and with such stipulation. Unfortunately, the petitioner was placed in a situation, that he could not challenge the removal, at that time, but then, the fact remains, that the respondents stuck to their word, and after acquittal, he has been reinstated vide Annex.15. Thus, since his removal cannot be supported by law, at least for the purpose of Annex.18, petitioner has to be treated to be “in service” candidate. At the same time, since as a matter of fact,

since passing the order Annex.3, till passing the order Annex.15, the petitioner was not factually in service, he obviously could not apply for admission, in response to Annex.18.

Thus, the situation that emerges is, that for no fault of the petitioner, and rather for the slackness of the respondents, in not reinstating the petitioner, immediately after acquittal, the situation has been brought about, for which, the petitioner cannot be punished.

Resultantly, the writ petition is allowed. The respondents are directed to allow the petitioner to continue to pursue the course, wherein he was given admission by the interim order dated 26.8.2005. The parties shall bear their own costs.

(N P GUPTA),J.